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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/068,773	02/05/2002	Akira Shibata	SHO 1008-01US	7568

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THE LAW OFFICE OF JOHN A. GRIECCI  
703 PIER AVE., SUITE B #657  
HERMOSA BEACH, CA 90254

EXAMINER

CHANG, VICTOR S

ART UNIT PAPER NUMBER

1771

DATE MAILED: 01/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/068,773

Applicant(s)

SHIBATA ET AL.

Examiner

Victor S Chang

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 04 November 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. The Examiner has carefully considered Applicants' amendments and remarks filed on 11/4/2003. Applicant's amendments to claims 1-17, 19 and 20, and newly added claim 21 have all been entered.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Rejections not maintained are withdrawn. In particular, Applicants' argument that "claims 8-10 do not recite a method of using a plurality of drip mats" (Remarks, page 12) is persuasive, and the prior rejection is withdrawn. Also, Applicants' argument that "the combined teachings of admitted prior art and JP '027 fail to disclose a hollow cavity formed adjacent a convex side of a protrusion (Remarks, page 14, 3<sup>rd</sup> full paragraph) is persuasive, as such the rejection over JP 027 is withdrawn; however, a new reference is found to render obvious the instant claimed invention, and Applicants' comments regarding the prior art are moot in view of the new ground of rejection.
4. With respect to Applicants' request for an initialed copy of form PTO-1449 mailed May 1, 2002 (Remarks, page 8), the Examiner notes that there is no record of PTO-1449 filed in May, 2002. The only PTO-1449 of record is dated 11/13/2002, and an initialed copy of which has been provided with Paper No. 0702. If Applicants have made proper filing, please provide a copy of the missing PTO-1449, along with a certificate of mailing, also copies of Abstracts in English at least, if foreign references are cited.

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claim 21 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

More particularly, in newly added independent claim 21, lines 6-7, the recitation "the surface is configured to support the food item while maintaining the cavity between the absorption sheet and the surface sheet" appears to be new matter, since Applicants have not pointed out any express or inherent support in the Specification. Applicants are required to cancel the new matter in the reply to this Office action.

7. Claims 1-3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is noted that in newly amended independent claim 1, line 9, the scope of the claimed breathability is changed from "adjusting" to "augmenting". Since the term "augmenting" is absent from the specification, it is vague and indefinite as to the scope of "augmenting". For the purpose of this Office action, it is presumed to be "increasing", so as to be consistent with the disclosure at [0038].

***Response to Amendment***

8. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicants' admitted prior art, substantially for the reasons set forth in section 7 of Paper No. 0702, together with the following additional observations.

Applicants' response arguing that Hei '886 and Hei '569 are "designed to augment the movement of liquid, not the movement of air" (Remarks, page 11, 2<sup>nd</sup> full paragraph) has been carefully considered, but is not persuasive. However, it is believed that providing suitable breathability, or air permeability, to a food tray mat to prevent undesirable color change of the meat at mat contact area is common knowledge, as evidenced by JP 20000025869A (Derwent English Abstract), which teaches that freshness of fish is maintained for long time by an absorbent tray mat with holes which is air permeable. As such, it would have been obvious to one of ordinary skill in the art to modify the holes of Hei '886 or Hei '569, so as to provide a suitable air permeability, motivated by the desire to prevent changes in meat color and freshness.

With respect to Applicants' argument that "the apertures ... described in the cited art, are not configured to augment breathability, such as by supporting a hollow cavity" (Remarks, page 11, lines 24-26), the Examiner notes that the structural element "hollow cavity" is absent from claims 1-10. Further, suitable air permeability is believed to be known art as set forth above.

For claims 8-10, the Examiner notes that the recited testing method fails to patentably distinguish the instant invention, because a suitable ventilation resistance in horizontal direction is believed to be an inherently disclosed component of the overall air permeability of the tray mat.

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9. Claims 11-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicants' admitted prior art in view of O'Connor et al. (US 2003/0108646 A1).

The teachings of Applicants' admitted prior are again relied upon as set forth above.

For claims 11, 13, 20 and 21, it is noted that the prior art shown in Fig. 11 (A) lacks a hollow cavity under the surface of the convex portion of the porous surface sheet. However, it is noted that O'Connor's invention is directed to a food extrudate absorbent pad, or mat. O'Connor teaches the pad comprises a bottom sheet shaped to define pockets, and the pockets are perforated at least at the bottom. The pockets may be stiff enough to hold the parts of the bottom sheet, so as to define channels under the food product through which the extrudate can run (i.e., non-clogging), and the pockets are formed in rows and columns (Abstract). In Fig. 4, O'Connor shows that a hollow cavity is formed adjacent the protrusion on the convex side. As such, it would have been obvious to one of ordinary skill in the art to combine the teachings of the admitted prior art and O'Connor's disclosure to form a drip absorption mat as in the instantly claimed invention, motivated by the desire to provide a food extrudate absorbent pad with stiff pockets to improve the flow of the extrudate.

For claims 12, 14-16 and 19, a suitable air flow (or ventilation resistance) in the horizontal direction of the porous surface sheet (or drip mat) is believed to be either inherently disclosed by the combined teachings of the admitted prior art and O'Connor, or an obvious optimization to one of ordinary skill in the art, motivated by the desire to prevent changes in meat color and freshness, as set forth above. Also, in claim 19, the

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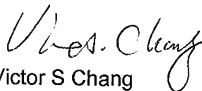
recitation of a method of use in an article claim clearly fails to patentably distinguish the claimed invention

For claims 17 and 18, it is believed that a suitable film thickness of the porous surface sheet and the number of apertures are either inherently disclosed by the combined teachings of the admitted prior art and O'Connor, motivated by the desire to reduce the cost of the material and to obtain a sufficient drip flow rate as set forth above.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor S Chang whose telephone number is 571-272-1474. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel H Morris can be reached on 703-308-2414. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-0994.



Victor S Chang  
Examiner  
Art Unit 1771